



**WISCONSIN SUPREME COURT
WEDNESDAY, SEPTEMBER 22, 2004
10:45 a.m.**

03-1086 Gene L. Olstad, et al. v. Microsoft Corporation,
et al.

This is a certification from the Wisconsin Court of Appeals, District I (headquartered in Milwaukee). The Court of Appeals may certify cases that cannot be decided by applying current Wisconsin law. The Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case began in Milwaukee County Circuit Court, Judge Jeffrey A. Kremers presiding.

This is a class-action lawsuit against Microsoft Corp. The Supreme Court will decide whether Wisconsin's antitrust statute¹ applies to interstate commerce.

Here is the background: Gene Olstad, on behalf of "All Others Similarly Situated," filed a lawsuit against Microsoft alleging that the company engaged in a nationwide course of anti-competitive conduct in order to build a monopoly that allowed it to overcharge consumers of its operating systems and certain software.

Olstad's action was premised on the findings of the federal district court for the District of Columbia, which concluded in 2000 that Microsoft had violated law by building a monopoly on operating systems designed to run on Intel-comparable personal computers. The federal court also found that Microsoft had monopolized the Web browser market by unlawfully tying Microsoft Explorer to its operating systems.

Since the federal court determined that Microsoft had engaged in illegal conduct, Olstad says, he brought this class-action lawsuit in Wisconsin in order to help Wisconsin consumers recover damages that they suffered as a result of that conduct.

Arguing that Wisconsin's antitrust law does not apply to out-of-state conduct, and further pointing out that it was not established under Wisconsin law and is not headquartered in Wisconsin, Microsoft asked the circuit court to dismiss the case. Microsoft's argument relies upon a 1914 Wisconsin Supreme Court case² that said the state's antitrust statute applies only to intrastate commerce.

The circuit court agreed with Microsoft and dismissed the case. The judge concluded that Wisconsin's antitrust law does not apply to commerce that extends beyond the state's borders and also that Olstad had not shown that he had suffered any damages and therefore was not an adequate class representative.

Olstad appealed, and the Court of Appeals certified this case to the Supreme Court, noting that the Wisconsin Legislature re-wrote the antitrust statute in 1980, and that the law may now be subject to a more broad interpretation than it was 90 years ago.

In the Supreme Court, Olstad contends – and the State of Wisconsin, in an *amicus* brief, agrees – that the Wisconsin statute applies to interstate commerce if it has a direct, substantial, and reasonably foreseeable effect on commerce within Wisconsin.

The Court will decide whether this class-action lawsuit on behalf of Wisconsin consumers will be allowed to proceed.

¹ Wis. Stat. 133.03

² Pulp Wood Co. v. Green Bay Paper & Fiber Co., 157 Wis. 604, 147 N.W. 1058 (1914)